

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF TEXAS
3 AUSTIN DIVISION

4 BOOK PEOPLE, INC., ET AL) Docket No. A 23-CA-858 ADA
5))
6 vs.) Austin, Texas
7))
8 MARTHA WONG, IN HER)
9 OFFICIAL CAPACITY AS THE)
10 CHAIR OF THE TEXAS STATE)
11 LIBRARY AND ARCHIVES)
12 COMMISSION, ET AL) August 31, 2023

13 TRANSCRIPT OF STATUS CONFERENCE VIA VIDEOCONFERENCE
14 BEFORE THE HONORABLE ALAN D. ALBRIGHT

15 APPEARANCES:

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35 Proceedings reported by computerized stenography,
36 transcript produced by computer-aided transcription.

11:31:59 1 THE COURT: Good afternoon -- good morning,
11:32:00 2 everyone.

11:32:01 3 Jen, would you call the case, please.

11:32:03 4 THE CLERK: Civil action in Case AU-23-CV-858,
11:32:07 5 BookPeople, Incorporated, Et Al vs. Martha Wong, Et Al.

11:32:10 6 Case called for a status conference.

11:32:12 7 THE COURT: Could I have announcements from
11:32:13 8 counsel, please.

11:32:18 9 MS. PRATHER: Your Honor, Laura Prather, Reid
11:32:21 10 Pillifant and Michael Lambert here on behalf of the
11:32:23 11 plaintiffs.

11:32:23 12 THE COURT: Welcome.

11:32:24 13 MS. PLETSCHER: Good morning, your Honor.
11:32:25 14 Amy Pletscher on behalf of defendants.

11:32:27 15 THE COURT: I'd like to thank Lily for being here
11:32:30 16 as the court reporter helping us out.

11:32:32 17 So we are not going to be able to get an order
11:32:38 18 finalized until next week, hopefully by next week, within
11:32:42 19 two weeks for sure, but our goal is by the end of next
11:32:45 20 week. But I wanted to let you all know that in the order,
11:32:48 21 we are going to find that the plaintiff has standing --
11:32:52 22 plaintiffs have standing. We're going to find that
11:32:56 23 sovereign immunity does not -- we're going to deny the
11:32:58 24 motion to dismiss with respect to sovereign immunity and
11:33:00 25 that we will be granting a -- an injunction.

11:33:04 1 And so, I'll ask, Ms. Pletscher, my general take
11:33:11 2 from the two hearings we had was that there will be no
11:33:18 3 immediate impact on the state because of your contention
11:33:22 4 that it's not till April 1st that these folks have to turn
11:33:26 5 the lists in, right?

11:33:28 6 MS. PLETSCHER: As far as an immediate impact,
11:33:31 7 your Honor, it is our position that that will impact the
11:33:34 8 portions of the statute that influence SBOE, TSLAC, and
11:33:40 9 TEA in their creation and implementation of their policies
11:33:43 10 that are needed to move the statute forward. So I guess
11:33:47 11 we would just --

11:33:48 12 THE COURT: Well then, you actually did a better
11:33:51 13 job answering my question than I did asking it. I am
11:33:54 14 enjoining any further action by the state. I wasn't sure
11:33:59 15 -- my take was, there was no other action by the state but
11:34:03 16 whatever action there is, I'm enjoining. There will be an
11:34:07 17 order out within a week or two to that effect setting out
11:34:11 18 the reasons why. And for Ms. Prather's clients' concerns
11:34:16 19 under my order, they have no obligation to comply with the
11:34:19 20 state law.

11:34:20 21 So that takes care -- I'll come back to you in
11:34:23 22 just a second, Ms. Pletscher.

11:34:26 23 With regard to Ms. Prather, is there anything
11:34:28 24 else you need me -- I'm sorry we can't get an order out.
11:34:31 25 I think it's better to have an order that I assume the

11:34:34 1 state's going to want to take this up and, you know, we
11:34:37 2 wanted it to be as fulsome as possible. That being said,
11:34:41 3 is there anything else you feel I need to do today to give
11:34:47 4 relief to your clients other than what I've done?

11:34:52 5 MS. PRATHER: Your Honor, I think that what
11:34:53 6 you've done is sufficient if you felt like you needed to
11:34:57 7 enter a one-line temporary restraining order just to
11:35:00 8 ensure that something was in writing, you could do that,
11:35:03 9 as well.

11:35:03 10 THE COURT: I don't know Ms. Pletscher well, but
11:35:06 11 I get the impression that me articulating this at a
11:35:09 12 hearing is sufficient for her and the state. And so, I
11:35:14 13 tend not to feel like I need a belt and suspender -- I'm
11:35:19 14 old-fashioned enough that I feel like if a judge orders
11:35:22 15 something that that tends to be enough. And I'm going to
11:35:26 16 give Ms. Pletscher the credit of not feeling like she
11:35:29 17 could say, oh, but he didn't put it in writing.

11:35:34 18 So is there anything else -- I'm more concerned
11:35:37 19 -- less with the procedural of how it's done than if I
11:35:42 20 said -- if I granted all the injunctive relief you think
11:35:46 21 you need to have temporarily until we get the order out.

11:35:51 22 MS. PRATHER: Yes, your Honor.

11:35:52 23 THE COURT: Now, from Ms. Pletscher, is there
11:35:55 24 anything you need to ask me about the injun -- because
11:35:59 25 there may be effects I'm not fully conversant with on the

11:36:03 1 state, if there's anything you want to articulate and have
11:36:06 2 me clarify to the extent I can orally before we get you
11:36:09 3 the order, I'm happy to take that up.

11:36:12 4 MS. PLETSCHER: Thank you, your Honor.

11:36:12 5 So just to clarify, you are enjoining the statute
11:36:15 6 in its totality, correct, so not parsing out?

11:36:18 7 THE COURT: (Moving head up and down.)

11:36:19 8 MS. PLETSCHER: Okay. And then, also, your
11:36:21 9 Honor --

11:36:21 10 THE COURT: Let me say on the record, I shook my
11:36:24 11 head yes, which is a bad thing. Yes on the record.

11:36:28 12 MS. PLETSCHER: Thank you, your Honor.

11:36:28 13 THE COURT: Lily may have gotten that, but let me
11:36:30 14 go ahead and the answer is yes on the record.

11:36:33 15 MS. PLETSCHER: And then, your Honor, just to
11:36:35 16 kind of follow up on that, we do intend to appeal any
11:36:39 17 granting of an injunction, and as such, we would, of
11:36:42 18 course, be seeking a stay of the injunction. If your
11:36:45 19 Honor's not so inclined to grant the stay of injunction
11:36:48 20 pending our appeal, would your Honor be amenable to
11:36:54 21 clearly articulating in your order that you are not
11:36:57 22 granting a stay of the injunction pending appeal?

11:37:00 23 THE COURT: So why don't we do it this way. I
11:37:03 24 think this is the first injunction hearing I've had so --
11:37:07 25 it's the first one I've granted at least. And so, to make

11:37:10 1 sure I'm doing it -- because I want to protect your
11:37:13 2 rights, as well. If you want to go ahead since I am not
11:37:18 3 in writing but order -- doing it now, if you want to go
11:37:21 4 ahead and make the motion for me to stay it and I will --
11:37:25 5 and I will deny it now, then we'll also include it in the
11:37:28 6 order if that protects you on appeal.

11:37:30 7 MS. PLETSCHER: Okay. And there may be a written
11:37:35 8 motion to stay forthcoming, as well, but I just wanted to
11:37:38 9 mention that is on the record.

11:37:39 10 THE COURT: That's fine.

11:37:41 11 MS. PLETSCHER: Okay.

11:37:42 12 THE COURT: We're doing the best we -- you know.

11:37:44 13 MS. PLETSCHER: Sure.

11:37:44 14 THE COURT: We couldn't get an order out with my
11:37:48 15 schedule. And obviously I think it protects the parties
11:37:51 16 much better on the appeal for us to have articulated the
11:37:55 17 reasons, you know, we're denying your motion. But let me
11:37:59 18 just -- this is for both sides. I have no ego here.

11:38:04 19 Whatever you all need to do to protect your clients'
11:38:07 20 interests, you know, I don't get offended when -- I've had
11:38:12 21 -- you know, you may have heard, I've had a mandamus or
11:38:15 22 two. I'm sort of past the point of being, you know -- I'm
11:38:19 23 okay with the fact that people have to protect their
11:38:22 24 rights on appeal.

11:38:23 25 Whatever it is you each need to do, that's fine

11:38:27 1 with me. And if there's anything we can do procedurally
11:38:30 2 to help one side or the other protect their rights, just
11:38:33 3 let us know and that's my intent.

11:38:36 4 So is there anything else on behalf of the state
11:38:40 5 you'd like to ask me to do or articulate?

11:38:43 6 MS. PLETSCHER: No. Thank you, your Honor.

11:38:45 7 THE COURT: Okay. Well, like I said, we intend
11:38:48 8 to have this out, you know, if we can, by the end of next
11:38:52 9 week. It will be very shortly after that, if not -- and
11:38:58 10 then, you all can do whatever you want to with it.

11:39:01 11 So have a good -- I don't mean to say -- but go
11:39:06 12 ahead and have a good weekend. It's a holiday weekend and
11:39:09 13 then, you could take battling over this again when we get
11:39:12 14 the order out. Take care.

11:39:13 15 MS. PLETSCHER: Thank you, your Honor.

11:39:14 16 MS. PRATHER: Thanks, your Honor.

17 (Proceedings concluded.)

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3 UNITED STATES DISTRICT COURT)

4 WESTERN DISTRICT OF TEXAS)

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6 I, LILY I. REZNIK, Certified Realtime Reporter,
7 Registered Merit Reporter, in my capacity as Official
8 Court Reporter of the United States District Court,
9 Western District of Texas, do certify that the foregoing
10 is a correct transcript from the record of proceedings in
11 the above-entitled matter.

12 I certify that the transcript fees and format comply
13 with those prescribed by the Court and Judicial Conference
14 of the United States.

15 WITNESS MY OFFICIAL HAND this the 1st day of September,
16 2023.

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